IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 229 OF 2003

1. Irappa Ghatgyappa Magdum)
2. Vijay irappa Magdum) .... appellants

versus

The State of Maharashtra ... Respondent.

Shri S.A. Ingawale for the appellants
Shri P.S.Hingorani APP for respondents.

CORAM; V.G. PALSHIKAR &
SMT.NISHITA MHATRE,JJ.

DATED; 10TH NOVEMBER, 2006.

JUDGMENT: (Per Palshikar, J.)

1. Being aggrieved by the judgment and order dated 21st January 2003 passed by the Addl.Sessions Judge, Gadhinglaj in Sessions trial No. 9 of 2002, the appellants named above have preferred this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us.

2. With the assistance of the advocate appearing on behalf of the appellants and the Addl. Public Prosecutor, we have scrutinised the entire record and reappreciated the evidence, both oral and documentary on record.

3. The prosecution case as disclosed on reappreciation of evidence stated briefly is that the accused were closely related to the victim. Accused no.1 was the brother of the victim and accused no.2 was the nephew of the victim and son of accused no.1. There were family dispute existing between the parties though they are separately residing. There were disputes between the accused and the victim regarding use of electricity for running electric motor in the field without paying the electricity charges on prorata basis. This frequently resulted in quarrels. Ultimately on 16th March 2002 at village Khandal where both the accused and the victim were residing, the accused arrived at night time, assaulted the victim with scythe (koyta) and stick, which assault resulted in the death of the victim. FIR was lodged by other brother of the deceased Bharmappa who is examined as P.w.3. On the basis of the report, investigation was conducted, accused persons were arrested. The prosecution examined 13 witnesses to prove its case and the learned trial Judge on appreciation of the evidence on record, came to the conclusion that the accused were guilty of the offence with which they are charged and therefore consistent with the findings, he proceeded to sentence the imprisonment as aforesaid.

4. Mr. Ingawale the learned advocate on behalf of the appellant vehemently contended that the impugned order of conviction is not sustainable for the following reasons:

i) The eye witness account given by P.ws. 3 and 4 is not believable from the fact that it is of closed relations but also for the reason that there is no infrinzic corroboration to the testimony of these two witnesses.

ii) The recovery as proved by P.w.10 at the instance of accused no.1 is not legal and proper and assuming it to be true, no adequate reason to connect the accused to the incident as there is no connection established by the prosecution between the weapon used and the accused persons.

iii) The prosecution ought to have proved that the weapons were used by the accused for assaulting the victim. Maximum, which can be held to have been proved is that the victim died because of the weapon.

iv) In view of the fact that the recovery itself is doubtful and there is no evidence to connect the weapon so recovered to the accused, it is not possible to sustain the order of conviction. According to the

learned advocate, the prosecution should have examined the finger print expert to prove that the weapon as discovered by the accused were handled by them. This according to the learned counsel, is a major lacuna in the case and therefore the eye witness account of P.ws. 3 and 4, not being corroborated, deserves no credence. He therefore prayed that the appeal is liable to be allowed and the accused are entitled to be acquitted.

5. These submissions were countered by the learned Additional Public Prosecutor for the State and he pointed out from the evidence as it stands on record that the prosecution has proved beyond reasonable doubt the involvement of the accused persons in the death of victim. According to the learned APP the very fact that the weapon kept in a particular place were discovered at the instance of the accused, proved the knowledge of the accused of the commission of crime and also user of those weapons. The prosecution, according to him, therefore has proved beyond doubt, the involvement of the accused in the death of victim. We have to consider this submission in the light of the evidence as led by the prosecution.

6. P.w.1 Appasaheb is a panch witness to arrest panchanama of the accused. The fact that the accused persons were arrested for the alleged murder of the

victim is not disputed and therefore there is no reason to discredit the testimony of this witness. P.w.2 Ramesh is the panch to the spot panchanama. There is no serious challenge to the fact that the death took place at the spot, which is proved by the panchanama.

7. P.w.9 is the doctor who examined the victim and declared him dead. P.w.11 is the doctor who conducted the post mortem and proved that the death of the victim was homicidal in nature. In relation to homicidal death, there is no dispute and therefore these witnesses could prove that the death of the victim was homicidal in nature.

8. P.w.12 A.R.Dabade is the investigating officer, who has proved all the documents, which were executed during the course of investigation at his instance and in his presence. He has proved the recovery of weapon at the instance of the accused. P.w.13 is Police Head constable Jurge. P.w.8 is the doctor who examined the accused and found that there were no injury on the person of the accused. P.w.7 Chavan is the Police Head Constable who carried the muddemal articles to the office of Chemical Analyser and proved it and there is also no dispute about the same. P.w.6 Ghodake is the person in whose trax vehicle the victim was taken to the hospital. From the evidence of these witnesses,

the prosecution has proved beyond doubt the following things.

i) That the deceased met homicidal death on 16th March 2002.

ii) The death was caused by the weapon which were discovered at the instance of the accused persons.

iii)The injuries found on the person of the accused have been proved to have caused by the weapon recovered at the instance of the accused.

iv) That there was enmity between the parties, the accused and the victim, and on earlier occasions there was quarrel between the parties on account of using of electricity.

v) That the death homicidal in nature was caused by the accused is sought to be proved by the deposition of P.ws. 3 and 4 who are brothers of the victim and also brothers of the accused.

9. The testimony of these witnesses therefore requires to be scrutinised minutely and in detail. P.w.3 Bharmappa in his deposition has given the relationship which existed between the victim and the accused. He describes the manner in which the partition of the family took place. He also said that the accused Irappa has obtained his share and is cultivating the same. He deposed about existence of electric motor pump in the bank of river and irrigation of the land by means of that pump and also stated that the electricity bill of the electric motor pump is jointly paid by all of them. However for the last two years or so, the accused did not contribute his share and on that account, there was quarrel between the parties. He then proceeds to state that on the date of the incident i.e. on 16-3-2002 at 11.00 p.m. in the night he was about to go to sleep and therefore went out of his house for urination, when he met the victim out side his house and the witness was told by the victim that he has come from the field and accused Vijay were found irrigating his land and the victim objected to it as the accused did not pay the electricity bill. He therefore asked accused Vijay to go back to his house. This witness then stated that Kempanna told him that he would again go and sit in the field as accused Vijay would again start irrigating his land. Accordingly Kempanna went to the field. This witness then came

back and led in his bed. After sometime he heard shouts from the back side of his house. Therefore he and his brother Shankar went towards the backside of his house with a torch in his hand. In the light of the torch the witness found that Irappa had inflicted scythe blow over left ear of Kempanna. Accused Irappa threatened this witness to kill him if he went forward to obstruct Irappa. Accused pushed this witness away. This witness also stated that Irappa inflicted scythe blow on the right side of the neck of Kempanna and Kempanna fell on the ground. This witness then saw Vijay beating Kempanna with stick and when Shankar obstructed Vijay started beating Shankar with fist and kicks. When the persons gathered started shouting the accused persons ran away. This witness has been extensively cross examined on behalf of the accused. But there is nothing in the cross examination, which would require his evidence to be rejected in toto.

10. P.w.4 Shankar is the next eye witness who also is the real brother of the victim and the accused. He has also given brief history of the family dispute existed between the accused and the victim. He corroborates P.w.3 completely in that regard. He also corroborates P.w.3 on the point of his conversation with accused no.2 Vijay before returning to the field in the night.

11. He then speaks of hearing shouts on the back side of his house and rushing towards the spot with torches in their hand. He has then said that in the light of the torch, they saw accused and the victim, accused Vijay was holding a stick in his hand and accused Irappa was holding scythe in his hand. He then stated that Irappa then inflicted scythe blow above the left ear of Kempanna. He then says that p.w.3 tried to intercept. Accused irappa and threatened P.w.3 to kill him if he goes forward. He also corroborates P.w.3 in this aspect. He then speaks of other relatives coming to the field and shouting because of which accused fled from the spot. He is also extensively cross examined. The cross examination is directed mainly into the family dispute and there is no veracity to the statement made by the witness. We thus have two eye witnesses to the incident both of whom corroborate each other and both were present at the spot. They had unfortunate task of deposing of the murder of one brother by another. In such situation, there is no reason whatsoever to believe that they would frame a brother in the murder of another brother merely because of earlier rivalry. It cannot be even suggested that the murderous assault was made by someone else and not the accused.

12. This eye witness account of two brothers of the victim is further fully corroborated by the testimony of the doctor who conducted the post mortem and has deposed about the injuries noticed by him on the person of the victim. That description matches the description given by P.ws. 3 and 4 while narrating eye witness account of what transpired on the faithful day. In addition to this corroboration, recovery of the weapon used for assault by the accused persons at the instance of the accused is yet another important circumstances which supports the eye witness account of P.ws. 3 and 4. In such circumstances in our opinion, there is no reason to question any of the findings recorded by the learned trial Judge. We are in total agreement with the findings recorded by the learned trial Judge. In our own reappreciation of the evidence, we are of the view that the prosecution has proved beyond reasonable doubt the murder of the victim. In the result, the appeal fails and it is dismissed.

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